



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-R01-OAR-2017-0343; A-1-FRL-9972-97-Region 1]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; State of Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to grant the Vermont Department of Environmental Conservation (VT DEC) the authority to implement and enforce, with respect to area sources only, the Vermont Perchloroethylene Dry Cleaning Rule in place of the National Emissions Standards for Hazardous Air Pollutants for Perchloroethylene Dry Cleaning Facilities (Dry Cleaning NESHAP). Pursuant to the Clean Air Act (CAA), the VT DEC submitted a request for approval to implement and enforce the Perchloroethylene Dry Cleaning Rule of the Vermont Air Pollution Control Regulations as a partial substitution for the National Emissions Standards for Hazardous Air Pollutants for Perchloroethylene Dry Cleaning Facilities (Dry Cleaning NESHAP), as it applies to area sources. EPA has reviewed this request and has determined that the Vermont Perchloroethylene Dry Cleaning Rule satisfies the requirements necessary for partial rule substitution. Thus, EPA is hereby granting VT DEC's request. This action does not affect the authority of any party to implement and enforce the Dry Cleaning NESHAP with respect to major source dry cleaners. This approval makes the Vermont Perchloroethylene Dry Cleaning Rule federally enforceable in Vermont.

DATES: This direct final rule will be effective **[Insert date 90 days after date of publication in the Federal Register]**, unless EPA receives adverse comments by **[Insert date 30 days after date of publication in the Federal Register]**. If EPA receives adverse comment, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of **[Insert date 90 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2017-0343 at <http://www.regulations.gov>, or via email to lancey.susan@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109-3912, telephone number 617-918-1656, lancey.susan@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. General Information

A. Why is the EPA using a direct final rule?

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the state rule should adverse comments be filed.

If the EPA receives such comments, then EPA will publish a notice withdrawing the direct final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[Insert date 90 days after date of publication in the Federal Register]** and no further action will be taken on the proposed rule. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

B. Does this direct final rule apply to me?

Categories and entities potentially regulated by this direct final rule include:

Category	NAICS ¹ code
Coin Operated Laundries and Dry Cleaners.....	812310
Dry Cleaning and Laundry Services (except coin operated).....	812320
Industrial Laundries.....	812332

¹ North American Industry Classification System.

This Table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this direct final rule. To determine whether your facility is affected you should examine the applicability criteria in the Vermont Air Pollution Control Regulations, Chapter 5, Air Pollution Control, section 5-253.11 Perchloroethylene Dry Cleaning. If you have questions regarding the applicability of any aspect of this action to a particular entity, please contact the person identified in the “For Further Information Contact” section.

C. What should I consider as I prepare my comments for the EPA?

Do not submit information containing CBI to EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, a copy of the comments that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: “EPA-R01-OAR-2017-0343”, Susan Lancey, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square (mail code OEP05-2), Boston, MA 02109-3912.

II. Background

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions standards, or requirements. The Federal regulations governing EPA’s approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E. *See* 58 FR 62262 (November 26, 1993), as amended by 65 FR 55810 (September 14, 2000). Under these

regulations, a state air pollution control agency has the option to request EPA's approval to substitute a state rule for the applicable Federal rule (*e.g.*, the National Emission Standards for Hazardous Air Pollutants). Upon approval by EPA, the state agency is authorized to implement and enforce its rule in place of the Federal rule, and the state rule becomes federally enforceable in that state.

EPA originally promulgated the Dry Cleaning NESHAP on September 22, 1993. *See* 58 FR 49354. The Dry Cleaning NESHAP has been amended several times and is codified at 40 CFR part 63, subpart M, "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities." On May 26, 2017, EPA received VT DEC's request to implement and enforce Vermont Air Pollution Control Regulations (VT APCR) section 5-253.11 Perchloroethylene Dry Cleaning (Vermont Dry Cleaning Rule) in lieu of the Dry Cleaning NESHAP as applied to area sources.

III. What Requirements Must a State Rule Meet to Substitute for a Section 112 Rule?

A state must demonstrate that it has satisfied the general delegation/approval criteria contained in 40 CFR 63.91(d). The process of providing "up-front approval" assures that a state has met the delegation criteria in Section 112(l)(5) of the CAA as implemented by EPA's regulations at 40 CFR 63.91(d). These criteria require, among other things, that the state has demonstrated that its NESHAP program contains adequate authorities to assure compliance with each applicable Federal requirement, adequate resources for implementation, and an expeditious compliance schedule. Under 40 CFR 63.91(d)(3), interim or final Title V program approval under 40 CFR part 70 satisfies the criteria set forth in 40 CFR 63.91(d) for "up-front approval." On November 29, 2001, EPA promulgated full approval of VT DEC's operating permits program with an effective date of November 30, 2001. *See* 66 FR 59535. Accordingly, VT DEC has satisfied the up-front approval criteria of 40 CFR 63.91(d).

Additionally, the regulations governing approval of state requirements that substitute for a section 112 rule require EPA to evaluate the state's submittal to ensure that it meets the stringency and other requirements of 40 CFR 63.93. A rule will be approved if the state requirements contain or demonstrate: (1) applicability criteria that are no less stringent than the corresponding Federal rule; (2) levels of control and compliance and enforcement measures that result in emission reductions from each affected source that are no less stringent than would result from the otherwise applicable Federal rule; (3) a compliance schedule that requires each affected source to be in compliance within a time frame consistent with the deadlines established in the otherwise applicable Federal rule; and (4) the additional compliance and enforcement measures as specified in 40 CFR 63.93(b)(4). *See* 40 CFR 63.93(b).

A state may also seek, and EPA may approve, a partial delegation of the EPA's authorities. *See* CAA 112(l)(1). To obtain a partial rule substitution, the state's submittal must meet the otherwise applicable requirements in 40 CFR 63.91 and 63.93, and be separable from the portions of the program that the state is not seeking rule substitution for. *See* 64 FR 1889.

Before we can approve alternative requirements in place of a part 63 emissions standard, the state must submit to us detailed information that demonstrates how the alternative requirements compare with the otherwise applicable Federal standard. A detailed discussion of how EPA will determine equivalency for state alternative NESHAP requirements is provided in the preamble to EPA's proposed Subpart E amendments on January 12, 1999. *See* 64 FR 1908.

After reviewing VT DEC's partial rule substitution request and equivalency demonstration for the Dry Cleaning NESHAP as it applies to area sources, EPA has determined this request meets all the requirements necessary for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93.

IV. What if Any Material Differences Exist between the Vermont Dry Cleaning Rule and the Dry Cleaning NESHAP and What is EPA's Evaluation?

The following discussion explains the major differences between the area source requirements in the Vermont Dry Cleaning Rule and the area source requirements in the Dry Cleaning NESHAP and how EPA evaluated the Vermont Dry Cleaning Rule. A detailed side-by-side comparison of these requirements, as well as an equivalency narrative, are included in the public docket.

A. What are the Differences in Applicability?

The Dry Cleaning NESHAP applies to each dry cleaning facility that uses perchloroethylene (PCE), except for coin-operated dry cleaning machines. The Dry Cleaning NESHAP exempts existing dry cleaning machines from certain requirements if the total PCE consumption of the dry cleaning facility is less than 140 gallons per year. *See* 40 CFR 63.320(d). The Vermont Dry Cleaning Rule applies to all dry cleaning facilities that use PCE at area sources of HAP. The Vermont Dry Cleaning Rule has no exemption for coin-operated machines and no exemption based on PCE consumption. Under Vermont's rule, major sources of Hazardous Air Pollutants (HAP) must continue to comply with the Federal Dry Cleaning NESHAP. *See* VT APCR section 5-253.11(a). Consequently, EPA finds that the applicability of the Vermont Dry Cleaning Rule is no less stringent than that of the Dry Cleaning NESHAP.

B. How Does the Vermont Dry Cleaning Rule Address the Control Requirements?

The Dry Cleaning NESHAP requires the owner or operator of each dry cleaning system at area sources to equip each dry cleaning machine with a refrigerated condenser, except that certain existing dry cleaning systems installed between December 9, 1991, and September 22, 1993, may alternatively comply by routing the air-perchloroethylene gas-vapor stream of each dry cleaning machine through a carbon adsorber. *See* 40 CFR 63.322(a). The Dry Cleaning

NESHAP requires new area source dry cleaning systems installed after December 21, 2005, to equip each dry cleaning machine with a refrigerated condenser and a non-vented carbon adsorber and to desorb the carbon adsorber in accordance with the manufacturer's instruction. *See* 40 CFR 63.322(o)(2). The Vermont Dry Cleaning rule requires all dry cleaning machines to be equipped with a refrigerated condenser without exception, and requires dry cleaning systems installed after December 21, 2005 to equip each dry cleaning machine with a refrigerated condenser and a non-vented carbon adsorber. The carbon adsorber must be desorbed in accordance with the manufacturer's instruction. The Vermont Dry Cleaning rule does not allow a primary carbon adsorber as a method of control. *See* VT APCR section 5-253.11(c)(2) and (4). Both the Vermont Dry Cleaning Rule and the Dry Cleaning NESHAP effectively prohibit transfer machines, prohibit dry cleaning systems installed after December 21, 2005 in a building with a residence, and prohibit any dry cleaning system in a building with a residence after December 21, 2020. *See* VT APCR section 5-253.11(c)(3), (5)-(6) and 40 CFR 63.322(o)(3)-(5). The Vermont Dry Cleaning Rule only allows equivalent control devices approved by the Vermont Air Pollution Control Officer and the EPA pursuant to 40 CFR 63.325. *See* VT APCR section 5-253.11(c)(2)(ii) and (3). Consequently, EPA finds that the Vermont Dry Cleaning control requirements are no less stringent than those of the Dry Cleaning NESHAP.

C. How do the Monitoring Requirements Differ?

The Dry Cleaning NESHAP requires dry cleaning systems at area sources to be inspected weekly for perceptible leaks and requires a monthly inspection using a halogenated hydrocarbon detector or PCE gas analyzer. *See* 40 CFR 63.322(k) and (o)(1)(i). Instead, the Vermont Dry Cleaning Rule requires a weekly inspection for perceptible leaks and a weekly inspection using a halogenated hydrocarbon detector or PCE gas analyzer. *See* VT APCR section 5-253.11(e)(1). The Dry Cleaning NESHAP requires weekly temperature monitoring to determine if the

temperature is equal to or less than 45 degrees Fahrenheit, or alternatively monitoring of refrigeration system high pressure and low pressure during the drying phase. *See* 40 CFR 63.323(a)(1). The Vermont Dry Cleaning Rule requires weekly temperature monitoring of the refrigerated condenser and requires the temperature to be maintained at less than or equal to 40 degrees Fahrenheit. The Vermont Dry Cleaning Rule does not allow refrigeration system high and low pressure monitoring as an alternative to temperature monitoring of the refrigerated condenser. *See* VT APCR section 5-253.11(c)(2)(i)(B) and (e)(2). Therefore, EPA finds that the Vermont Dry Cleaning Rule monitoring requirements are no less stringent than those of the Dry Cleaning NESHAP.

D. What are the Differences in Reporting and Recordkeeping?

The Dry Cleaning NESHAP requires the owner or operator of any new dry cleaning facility to submit a notification of compliance status within 30 days after startup. *See* 40 CFR 63.324(b). The Vermont Dry Cleaning Rule also requires the owner or operator of any new dry cleaning facility to submit a notification of compliance status within 30 days of commencing operations. *See* VT APCR section 5-253.11(g)(2). Thus, the Vermont Dry Cleaning Rule reporting requirements are no less stringent than those of the Dry Cleaning NESHAP.

E. Is the State's Submittal Separable?

A state may also seek, and EPA may approve, a partial delegation of the EPA's authorities. *See* CAA 112(l)(1). To obtain a partial rule substitution, the state's submittal must meet the otherwise applicable requirements in 40 CFR 63.91 and 63.93, and be separable from the portions of the program that the state is not seeking rule substitution for. *See* 64 FR 1889. A separable portion of a state rule or program is a section(s) of a rule or a portion(s) of a program which can be acted upon independently without affecting the overall integrity of the rule or program as a whole.

Here, the state's rule applies to area source dry cleaners, while the NESHAP continues to apply to major source dry cleaners. EPA finds that there exists a logical and compelling distinction between area and major dry cleaning sources. That is, the state rule may independently regulate area source dry cleaners separate from major source dry cleaners, without affecting the overall integrity of the rule or program as a whole. EPA further finds that granting partial delegation would not create an overly cumbersome or unworkable scheme. For these reasons, EPA concludes that the portion of the NESHAP delegated under this partial rule substitution is separable from the remainder of the NESHAP. Therefore, partial delegation is appropriate.

F. What Is EPA's Action Regarding the Vermont Dry Cleaning Rule?

After reviewing VT DEC's request for approval of the Vermont Dry Cleaning Rule, EPA has determined that the Vermont Dry Cleaning Rule meets all of the requirements necessary for partial rule substitution under section 112(l) of the CAA and 40 CFR 63.91 and 63.93. Therefore, EPA hereby approves VT DEC's request to implement and enforce VT APCR section 5-253.11 (as effective under state law on December 15, 2016), in place of the Dry Cleaning NESHAP for area sources in Vermont. As of the effective date of this action, the Vermont Dry Cleaning Rule is enforceable by EPA and by citizens under the CAA. Although VT DEC has primary responsibility to implement and enforce the Vermont Dry Cleaning Rule, EPA retains the authority to enforce any requirement of the rule upon its approval under CAA 112. *See* CAA section 112(l)(7).

V. Final Action

EPA is approving the Vermont Air Pollution Control Regulations, Chapter 5, Air Pollution Control, section 5-253.11, Perchloroethylene Dry Cleaning (as effective under state law on December 15, 2016) as a partial rule substitution for the Dry Cleaning NESHAP for area sources

in Vermont. The Federal Dry Cleaning NESHAP continues to apply to major source dry cleaners in Vermont. The applicability of the Federal NESHAP to major source dry cleaners is in no way affected by this action.

This rule will be effective **[Insert date 90 days after date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days after date of publication in the Federal Register]**.

VI. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Vermont Air Pollution Control Regulations, Chapter 5, Air Pollution Control, section 5-253.11, Perchloroethylene Dry Cleaning, effective December 15, 2016. The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov>.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator has the authority to approve section 112(l) submissions that comply with the provisions of the Act and applicable Federal regulations. In reviewing section 112(l) submissions, EPA's role is to approve state choices, provided that they meet the criteria and objectives of the CAA and of EPA's implementing regulations. Accordingly, this action merely approves the State's request as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the submitted rule is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective **[Insert date 90 days after date of publication in the Federal Register]**.

VIII. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and record keeping requirements.

Dated: February 26, 2018.

Alexandra Dapolito Dunn,
Regional Administrator,
EPA New England.

40 CFR part 63 is amended as follows:

**PART 63 - NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR
POLLUTANTS FOR SOURCE CATEGORIES**

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A – General Provisions

2. Section 63.14 is amended by adding paragraph (l)(13) to read as follows:

§63.14 Incorporations by reference.

* * * * *

(l)* * *

(13) Vermont Air Pollution Control Regulations, Chapter 5, Air Pollution Control, section 5-253.11, Perchloroethylene Dry Cleaning, effective as of December 15, 2016. Incorporation by reference approved for §63.99(a).

* * * * *

Subpart E-Approval of State Programs and Delegation of Federal Authorities

3. Section 63.99 is amended by adding paragraph (a)(46) to read as follows:

§63.99 Delegated Federal authorities.

(a)* * *

(46) *Vermont*. (i) Affected area sources within Vermont must comply with Vermont Regulations applicable to Hazardous Air Pollutants (incorporated by reference as specified in §63.14) as described in paragraph (a)(46)(i)(A) of this section:

(A) The material incorporated into the Vermont Air Pollution Regulations at Chapter 5, Air Pollution Control, section 5-253.11, Perchloroethylene Dry Cleaning (effective as of December 15, 2016) pertaining to area source dry cleaning facilities in the State of Vermont jurisdiction, and approved under the procedures in §63.93 to be implemented and enforced in place of the requirements for area source dry cleaning facilities in the Federal NESHAP for Perchloroethylene Dry Cleaning Facilities (subpart M of this part), effective as of July 11, 2008. For purposes of this paragraph (a)(46) the term “area source dry cleaning facilities” means any source that qualifies as an area source under §63.320(h).

(1) *Authorities not delegated*. (i) Vermont is not delegated the Administrator’s authority to implement and enforce Vermont Air Pollution Control Regulations, Chapter 5, Air Pollution Control, section 5-253.11, in lieu of those provisions of subpart M of this part which apply to major sources, as defined in §63.320(g).

(ii) [Reserved]

(2) [Reserved]

(B) [Reserved]

(ii) [Reserved]

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